IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Bail Appl..No. 6567 of 2007()

CRIME NO.491/07 OF ALAPPUZHA NORTH POLICE STATION

PETITIONER/ACCUSED

MICHAEL, S/O. GARVASE,
AGED 30 YEARS, VELLAPANAD
THUMPOLY BEACH, ALAPPUZHA.

BY ADV. SRI.G.PRIYADARSAN THAMPI

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTING SUB INSPECTOR OF POLICE
ALAPPUZHA NORTH POLICE STATION
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6567 OF 2007

Dated this the 2nd day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable, inter alia, under Sec.326 of the IPC. He is the sole accused. The alleged incident took place at about 8 a.m. on 3/7/07. The victim – a woman, had suffered a fracture. Within one and a half hours of the occurrence, she reached the hospital and she alleged to the Doctor that it was a case of assault. The police had allegedly gone to her at the hospital; but no crime is seen registered. After she was discharged from the hospital, she came to know to her surprise that the police have not taken any action. Dissatisfied with the conduct of the police, she filed a complaint before the learned Magistrate which complaint was referred by the learned Magistrate to the police under Section

156(3). A crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest. The private complaint is seen filed long later i.e., only on 1/9/07.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner is the brother of a neighbour of the victim. False and frivolous allegations are being raised against the petitioner on account of animosity, submits the learned counsel for the petitioner. The learned counsel for the petitioner further relies on the facts that there is no visible external injury (except pain), that the complaint is belated and that the allegation to the Doctor is that two to three persons had attacked the victim; whereas the present allegation relates only to the petitioner herein.

3. The learned counsel for the petitioner, in these circumstances, prays that the petitioner may be saved of the undeserved trauma of arrest and detention. Subject to appropriate conditions, the petitioner may be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the delay in registering the crime can in no way detract against the acceptability of the allegations raised by the de facto

complainant she having alleged to the Doctor, even in the wound certificate, that the injury was suffered by her when she was assaulted. In the nature of the contentions, the learned Public Prosecutor was requested to make available the Case Diary for my perusal. I have perused the same. I am satisfied that there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge